

STRATOSPHERIC OZONE PROTECTION

Compliance Guidance for Section 610 of the Clean Air Act Nonessential Products Containing Chlorofluorocarbons

Introduction

The purpose of this document is to provide the Regions with guidance on how to enforce the regulations implementing section 610 of the Clean Air Act (CAA). This section, Nonessential Products Containing Chlorofluorocarbons, identifies nonessential products that release class I or class II substances into the environment and prohibits any person from selling or distributing such product in interstate commerce. The implementing regulations identify certain products subject to the ban and impose a sales restriction on others.

Enforceable Requirements

The regulations implementing section 610 have the following three prohibitions:

The first prohibition, §82.64(a), deals with the nonessential products identified by Congress in the statute. The prohibition and affected products are as follows:

§82.64(a) Effective February 16, 1993, no person may sell or distribute, or offer to sell or distribute, in interstate commerce any of the products identified as being nonessential in §82.66(a).

The products identified in section 82.66(a) are:

Any plastic party streamer or noise horn which is propelled by a chlorofluorocarbon, including but not limited to--

- a) String confetti
- b) Marine safety horns
- c) Sporting event horns
- d) Personal safety horns
- e) Wall-mounted alarms used in factories or other work areas
- f) Intruder alarms used in homes or cars.

The second prohibition, §82.64(b)¹, imposes a sales restriction on cleaning fluids for photographic and electronic equipment. This prohibition states:

§82.64(b) Effective February 16, 1993, no person may sell or distribute, or offer to sell or distribute, in interstate commerce any of the products identified as being nonessential in §82.66(b)

⁰ The Federal Register notice of January 15, 1993, actually omits the citation "(b)" in front of the second paragraph of the Prohibitions section. This was a printing error which will be corrected when the regulation appears in the Code of Federal Regulations. We will refer to the second paragraph as 82.64(b), regardless of the fact that "(b)" does not appear in the text in the Federal Register.

to a person who does not provide proof of being a commercial purchaser, as defined under §82.62.

These cleaning fluids are defined in section 82.66(b) as follows:

Any cleaning fluid for electronic and photographic equipment which contains a chlorofluorocarbon (1) including but not limited to liquid packaging, solvent wipes, and gas sprays, (2) except for those sold or distributed to a commercial purchaser.

The third prohibition, §82.64(c), deals with additional products identified by EPA as nonessential. It states:

Effective January 17, 1994, no person may sell or distribute, or offer to sell or distribute, in interstate commerce any of the products identified as being nonessential in §82.66(c) or §82.66(d).

These products are:

§82.66(c): Any plastic flexible or packaging foam which is manufactured with or contains a chlorofluorocarbon, (1) including but not limited to--

- a) Open cell polyurethane flexible slabstock foam
- b) Open cell polyurethane flexible molded foam
- c) Open cell rigid polyurethane poured foam
- d) Closed cell extruded polystyrene sheet foam
- e) Closed cell polyethylene foam
- f) Closed cell polypropylene foam

(2) except--

flexible or packaging foam used in coaxial cable

§82.66(d): Any aerosol product or other pressurized dispenser, other than those specified above, which contains a chlorofluorocarbon, (1) including but not limited to household, industrial, automotive and pesticide uses, (2) except--

- a) Medical devices listed in 21 CFR §2.125(e)
- b) Lubricants for pharmaceutical and tablet manufacture
- c) Gauze bandage adhesives and adhesive removers
- d) Topical anesthetic and vapocoolant products
- e) Lubricants, coatings or cleaning fluids for electrical or electronic equipment, which contain CFC-11, CFC-12, or CFC-113 for solvent purposes, but which contain no other CFCs
- f) Lubricants, coatings or cleaning fluids used for aircraft maintenance, which contain CFC-11 or CFC-113, but which contain no other CFCs
- g) Mold release agents used in the production of plastic and elastomeric materials, which contain CFC-11 or CFC-113, but which contain no other CFCs
- h) Spinnerette lubricant/cleaning sprays used in the production of synthetic fibers, which contain CFC-114, but which contain no other CFCs
- i) Containers of CFCs used as halogen ion sources in plasma etching
- j) Document preservation sprays which contain CFC-113, but which contain no other CFCs

k) Red pepper bear repellent sprays which contain CFC-113, but which contain no other CFCs.

Evidentiary Requirements

In the case of all products except for the cleaning fluids, any sale, offer for sale, distribution, or offer for distribution constitutes a violation of the regulations. The following are some examples of evidence the Agency can use to prove a violation:

- 1) Sales invoices or receipts, indicating that a banned product was sold to a consumer.
- 2) Any advertising materials, such as advertisements in newspapers, magazines or trade journals, or any promotional literature describing the product. These would be considered an offer for sale.
- 3) Bills of lading, shipping documents, invoices indicating that the manufacturer has sold the product to a distributor or that a distributor has sold it to a retailer, or similar documents.
- 4) Product labels, manufacturing or production data, or statements from the manufacturer, indicating that the product contains class I or class II substances.

For the sales restriction on noncommercial uses of cleaning fluids, the regulation requires that purchasers present identification at the point of sale indicating that they are a commercial entity. This is similar to the sales restriction on the sale of small cans of refrigerant in section 609.

Acceptable forms of proof which must be presented at the point of sale are given in the Definitions section, §82.62. Commercial is defined as:

Commercial, when used to describe the purchaser of a product, means a person that has one of the following identification numbers--

- (i) a federal employer identification number
 - (ii) a state sales tax exemption number
 - (iii) a local business license number
 - (iv) a government contract number
- and that uses the product in the purchaser's business or sells it to another person.

Therefore, in order to purchase affected cleaning fluids, a purchaser must present one of the above numbers. Cleaning fluids which contain CFCs are sold in violation of the regulation if the purchaser does not have and cannot present any of these numbers or if the seller does not request identification. Evidence that the cleaning fluid contains a CFC may be obtained from the product label or other manufacturing or production data obtained from the manufacturer of the product.

Compliance Monitoring

Given the fact that most products identified as being nonessential are now manufactured with alternative chemicals, we do not expect to perform routine compliance inspections. We anticipate that most

information concerning noncompliance will come in the form of tips, especially concerning illegal sales of cleaning fluids.

The Consumer Products Safety Commission uses its own employees as informal inspectors, as employees are also consumers of affected products. Following the Commission's example, SSCD will prepare a brief fact sheet explaining the requirements of this regulation for distribution to EPA employees in an effort to educate them to look out for possible violations and to inform them where they can report such violations.

Enforcement Options

If the Agency suspects that a violation has taken place, EPA can pursue the following enforcement options:

1) Finding of Violation

We should issue a Finding of Violation (FOV) letter if we have knowledge that a violation (i.e., sale, distribution, offer for sale or offer for distribution of an affected product) has taken place in order to benefit from the presumption of continuing non-compliance². An FOV can also be coupled with a section 114 letter requesting additional information.

2) Compliance Order

We can order a person or business to take steps to return to compliance if a violation has taken place. Failure to comply with a compliance order is a violation of section 113 of the Act and violators are subject to penalties of up to \$25,000.

As this regulation affects the sale and distribution of products, a compliance order would first order the company to stop selling or distributing the products, require the company to tell us how many affected products were sold or distributed, ask what the company is planning on doing with the products, and then ask what the final disposition of the products was. These orders are stated as follows:

COMPANY shall immediately cease and desist the sale, distribution, offer for sale or offer for distribution of affected products.

COMPANY shall provide U.S. EPA with the total number of affected products sold by your company since [EFFECTIVE DATE]; including supporting documentation.

COMPANY shall provide U.S. EPA with the planned disposition of each remaining affected product.

COMPANY shall provide U.S. EPA with the final disposition of each remaining affected product.

3) Administrative Cases

Violations can be addressed administratively under the authority of section 113(d)(1) of the CAA. Cases cannot be brought administratively unless they involve penalties of less than \$200,000 and the violations are less than twelve months old. Penalties will be calculated using the Penalty Policy.

4) Civil Judicial Cases

If the violations involve penalties of more than \$200,000 or occurred more than twelve months prior to filing, the cases must be referred to the Department of Justice.

⁰ Section 113(e)(2) states, "[W]here the Administrator or an air pollution control agency has notified the source of the violation, and the plaintiff makes a prima facie showing that the conduct or events giving rise to the violation are likely to have continued or recurred past the date of notice, the days of violation shall be presumed to include the date of such notice and each and every day thereafter until the violator establishes that continuous compliance has been achieved...."

5) Criminal Cases

If the evidence shows that the defendant knew or should have known that a sale or distribution of an affected product action was prohibited by law, the Agency should seek criminal penalties under section 113(c) against the defendant.

Taking Enforcement Action

In the case of an alleged violation, it is always appropriate to issue a section 114 letter, requesting additional information in order to make a compliance determination. If sufficient evidence of a violation exists, EPA has the authority to pursue either civil and criminal enforcement actions or both.

We expect that enforcement actions will usually be taken against companies or businesses, not against individual employees. EPA may enforce against individuals in appropriate circumstances, such as when conduct is knowing and willful or when an individual is a responsible company official.